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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,000	09/26/2001	William Younger Guess		3019

7590 11/16/2004
William Younger Guess
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Baton Rouge, LA 70806

EXAMINER
BECKER, DREW E

ART UNIT 1761	PAPER NUMBER
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DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/964,000

Applicant(s)

GUESS, WILLIAM YOUNGER

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Request for Continued Examination

1. The request filed on October 12, 2004 for an RCE based on parent Application No. 09/964,000 is acceptable and an RCE has been established. An action on the RCE follows.

Drawings

2. The drawings were received on October 12, 2004. These drawings are acceptable.

Claim Objections

3. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 40-47 have been renumbered as 39-46.

Response to Amendment

4. The amendments filed May 28, 2004 and October 12, 2004 are objected to under 35 U.S.C. 132 because they introduce new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the

invention. The added material which is not supported by the original disclosure is as follows: new paragraphs 0010.1, 0010.2, and 0012.1.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 22-46 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant's specification does not appear to disclose "a dominant proportion of water and protein", "a weight of at least 7 (or 10) percent", "means for highlighting", "non-pork muscle tissue", both meats being "longissimus dorsi", and both meats being "psoas major".

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 22-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claim 22 recites "a dominant proportion of water and protein". It is not clear what level of protein and water would be considered "dominant".

10. Claims 24 and 31 recite "means for highlighting". It is not clear what component this refers to. It is not clear whether the any component is required since the boundary itself could provide this function.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 22-23, 30-31, 35-36, 40-41, and 44-45 are rejected under 35

U.S.C. 102(b) as being anticipated by Lovell [Pat. No. 3,615,692].

Lovell teaches a food comprising a first elongate muscle mass (Figure 2, #5), a second elongate muscle mass which inherently provided highlight means and a boundary with the first muscle mass (Figure 4, #40; column 2, line 31), and the second muscle mass inherently being at least 10% of the weight as evidenced by its being greater than 10% of the total volume (Figure 4).

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13. Claims 22, 24, 30-31, 35-36, 40-41 and 44-45 are rejected under 35

U.S.C. 102(e) as being anticipated by Holbrook [Pat. No. 6,599,545].

Holbrook teaches a food comprising a first elongate muscle mass (Figure 1, #14; column 3, line 14), a boundary means (Figure 6, #50), a second elongate muscle mass which inherently provided means to determine the boundary (Figure 9, #18; column 3, line 14), and the second muscle mass inherently being at least 10% of the weight as evidenced by its being greater than 10% of the total volume (Figure 10).

14. Claim 31 and 35-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Haig [Pat. No. 6,582,741].

Haig teaches a food comprising a first elongate food mass in the form of a pork loin (Figure 1, #25; column 2, line 20) and a second elongate mass which inherently provided highlight means to determine the boundary (Figure 1, #23), and the second mass inherently being at least 10% of the weight as evidenced by its being greater than 10% of the total volume (Figure 1).

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 22, 24, 30, 40-41, and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haig in view of Huling [Pat. No. 6,117,467].

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Haig teaches a food comprising a first elongate food mass in the form of a pork loin (Figure 1, #25; column 2, line 20), a second elongate food mass which inherently provided highlight means to determine a boundary (Figure 1, #23), and the second food mass inherently being at least 10% of the weight as evidenced by its being greater than 10% of the total volume (Figure 1). Haig does not teach the second food being meat. Huling teaches a food product comprising a first muscle mass (Figure 8, #100) and a second muscle mass within the first (Figure 8, #110). It would have been obvious to one of ordinary skill in the art to incorporate the meat filling of Huling into the invention of Haig since both are directed to meat products, since Haig already included a food stuffing (Figure 1, #23), and since Huling teaches that meats were commonly stuffed within other meats (Figure 8).

17. Claims 26-29 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haig, in view of Huling, as applied above, and further in view of Applicant's Admitted Prior Art [pages 1-3 of the specification].

Haig and Holbrook teach the above mentioned components. Haig and Holbrook do not recite top loin, tenderloin, rib sections, longissimus dorsi, or psoas major. Applicant's Admitted Prior Art (AAPA) teaches that commonly used cuts of meat included top loin, tenderloin, rib sections, longissimus dorsi, or psoas major (pages 1-3 of the specification). It would have been obvious to one of ordinary skill in the art to use the above listed meats in the invention of Haig, in view of Huling, since all are directed to food products, since Haig already include the use of pork loin (column 2, line 20), since

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Huling already included the use of meat for both the first and second foods (Figure 8), and since these meats were all commonly used in the culinary arts.

18. Claims 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haig, in view of Huling, as applied above, and further in view of Giuliano Bugialli's Techniques of Italian Cooking.

Haig and Huling teach the above mentioned components. Haig and Huling do not recite slicing into steaks. Giuliano Bugialli's Techniques of Italian Cooking teaches slicing a roast into steaks (page 287). It would have been obvious to one of ordinary skill in the art to incorporate the steak slicing of Bugialli into the invention of Haig, in view of Huling, since all are directed to meat products, since Haig already included a pork loin roast (column 2, line 20), and since roasts were commonly sliced into steaks as shown by Bugialli (page 287).

19. Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haig, as applied above, in view of Bemis [Pat. No. 1,807,189].

Haig teaches the above mentioned components. Haig does not recite a green leaf around the filling. Bemis teaches a food product comprising a filling wrapped in lettuce (Figure 1, #2-4). It would have been obvious to one of ordinary skill in the art to incorporate the lettuce of Bemis into the invention of Haig since both are directed to food products, since Haig already included an outer food stuffed with a filling (Figure 1), and since the lettuce wrap of Bemis would have provided a convenient means for holding the stuffing in place while also adding garnish (Figure 1).

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20. Claims 37-39 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haig, in view of Huling, as applied above, and further in view of Bemis.

Haig and Huling teach the above mentioned components. Haig and Huling do not recite a green leaf around the filling. Bemis teaches a food product comprising a filling wrapped in lettuce (Figure 1, #2-4). It would have been obvious to one of ordinary skill in the art to incorporate the lettuce of Bemis into the invention of Haig, in view of Huling, since all are directed to food products, since Haig already included an outer food stuffed with a filling (Figure 1), and since the lettuce wrap of Bemis would have provided a convenient means for holding the stuffing in place while also adding garnish (Figure 1).

Response to Arguments

21. Applicant's arguments filed October 12, 2004 have been fully considered but they are not persuasive.

Applicant argues that Lovell does not teach "animal tissue elongate". However, Lovell clearly teaches a "animal tissue elongate" (Figure 4, #40).

Applicant argues that Holbrook does not teach "animal tissue elongate". However, Holbrook clearly teaches a "animal tissue elongate" (Figure 3, #30).

Applicant argues that Haig does not teach "animal tissue elongate". However, claim 31 does not require this, it recites only "an edible filling".

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a whole, intact muscle) are not recited in the rejected claim(s). Although the claims

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are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that Holbrook is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Holbrook is directed to a food product with an inner foodstuff and an outer foodstuff, wherein the foodstuffs can be meat (column 3, line 15; Figure 2).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Drew E Becker
Primary Examiner
Art Unit 1761


DREW BECKER
PRIMARY EXAMINER
11-10-04